

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

SCOTT D. FREESE,

Defendant.

CASE NO. 8:05CR131

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”). Neither party filed objections to the report. See Order on Sentencing Schedule, ¶ 6. However, the Addendum to the PSR reflects that initial objections were submitted to the probation officer. *Id.* ¶ 4. The Defendant has filed a motion for downward departure (Filing No. 296) and a motion for variance from the guidelines (Filing No. 297). Both motions are supported by briefs. (Filing Nos. 296, 297.) The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The plea agreement does not include an agreement with respect to the Defendant's role in the offense. The PSR included a downward adjustment of 3 levels for a role falling between that of a minor and a minimal participant. Although neither party objected to the role adjustment, the Defendant discussed the matter in his motion for downward departure. (Filing No. 296.) Considering the arguments, the lack of objection by the Defendant to the facts in the PSR with respect to role, the lack of any objection by the government to the PSR, and the information in the PSR, the Court's tentative findings are that the Defendant's

role reflected in the PSR is correctly calculated. The motion for departure (Filing No. 296), considered as the Defendant's objection to ¶ 31, is denied.

The Defendant's motion for variance (Filing No. 297) will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's objection to the presentence investigation report, submitted in the form of a motion for downward departure (Filing No. 296) is denied;

2. The Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final;

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing; and

6. The Defendant's motion for variance (Filing No. 297) will be heard at sentencing.

DATED this 3rd day of July, 2006.

BY THE COURT:

S/ Laurie Smith Camp
United States District Judge